

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

B.A,)	
Plaintiff,)	
)	No. 1:23-cv-423
-v-)	
)	Honorable Paul L. Maloney
TRI COUNTY AREA SCHOOLS, <i>et al.</i> ,)	
Defendants.)	
_____)	

ORDER STRIKING OFFER OF JUDGMENT

This matter is before the Court on Defendants’ offer of judgment (ECF No. 36).

Rule 68 of the Federal Rules of Civil Procedure authorizes parties defending a claim to serve on the opposing party an offer of judgment. The Rule provides, upon written acceptance of the offer, “either party may then file the offer and notice of acceptance, plus proof of service.” Fed. R. Civ. P. 68(a). Rule 68 does not authorize a party defending a claim to file its offer of judgment with the court before receiving written notice of acceptance. *Hopper v. Euclid Manor Nursing Home, Inc.*, 867 F.2d 291, 294 (6th Cir. 1989) (“Rule 68 provides that the offer of settlement be filed with the court *only if accepted* and that evidence of an offer that was not accepted is not admissible except in a proceeding to determine costs.”) (emphasis added). *Accord Horowitch v. Diamond Aircraft Indus., Inc.*, 645 F.3d 1254, 1259 n.2 (11th Cir. 2011) (“Rule 68 instructs the parties not to file an offer of judgment with the court at the time of service.”); *Scottsdale Ins. Co. v. Tolliver*, 636 F.3d 1273, 1278 (10th Cir. 2011) (discussing a conflict with the state rule and noting that “Rule 68 precludes a defendant from filing an offer of judgment with the court at the time the offer is made[.]”).

When an offer of judgment is filed before written acceptance is received, courts have stricken the offer of judgment from the record. *Berberena-Garcia v. Aviles*, 258 F.R.D. 39, 40 (D.P.R. 2009) (collecting cases); *Scheriff v. Beck*, 452 F.Supp. 1254, 1259 (D. Col. 1978) (“When such a procedural error is made, the only corrective action which need be taken is to strike the early filing.”) (citations omitted).

Because Defendants filed their offer of judgment without contemporaneously filing any written acceptance by Plaintiff, the offer of judgment (ECF No. 36) is **STRICKEN**. The court clerk shall **REMOVE** the entry from the electronic docket.

IT IS SO ORDERED.

Date: February 26, 2024

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge